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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/790,501	03/01/2004	Frank Verriet	60,130-2044/04MRA0171	1037
26096	7590	03/03/2006	EXAMINER	
CARLSON, GASKEY & OLDS, P.C. 400 WEST MAPLE ROAD SUITE 350 BIRMINGHAM, MI 48009			BURCH, MELODY M	
			ART UNIT	PAPER NUMBER
			3683	

DATE MAILED: 03/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/790,501

Applicant(s)

VERRIET, FRANK

Examiner

Melody M. Burch

Art Unit

3683

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 03 January 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: see number 11. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-13.

Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 11. does NOT place the application in condition for allowance because: amending claim 1 to include the limitations of claim 2 raises a new issue with respect to claim 7, for example. The amendment causes the phrase "a rod seal" in line 2 of claim 7 to be indefinite since it is unclear whether the rod seal in claim 7 is intended to be the same or different from the seal with the rod of claim 2. Also, Applicant argues with respect to claim 2 that the seal is arranged between the rod and the cylinder head and is exposed to pressurized air within the elastomeric tube. Examiner notes, however, the the claim does not recite that the seal is exposed to pressurized air, but that a cavity adjacent to the seal is generally at atmospheric pressure. Examiner notes that the circular cavity carved out at the top of element 50 is adjacent the seal via intervening elements and is at approximately atmospheric pressure as claimed. With respect to the argument regarding claim 5, Examiner maintains that the bottom part of element 50 shown below the lead line of "54" is arranged axially between the top of element 56 and element 36. With respect to the argument regarding claim 7, Examiner maintains that a part of the air chamber (particularly the radially outward portions of the pressurized sealed air chamber) are radially outwardly arranged from the rod seal. With regards to claim 8, Applicant discusses the isolation of the spring between the lead lines of 18 and 22 from the compressible fluid chamber. The discussion disregards the explanation set forth in paragraph 4 of the Office action where Examiner explained the exertion of a preload by way of the compressible fluid and the spring 60 forces in an extension stroke. With regards to claim 11 Examiner notes that the hydraulic cylinder is element 17, the outer wall is the threaded portion shown radially outward of element 20 (this wall abuts the portion at the end of 70a via intervening elements), the rod 11 is arranged interiorly of the outer wall and is sealed relative to a cylinder head or bottom flange portion of element 17 by way of a rod seal 21. Accordingly, the rejections have been maintained.

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3/1/06